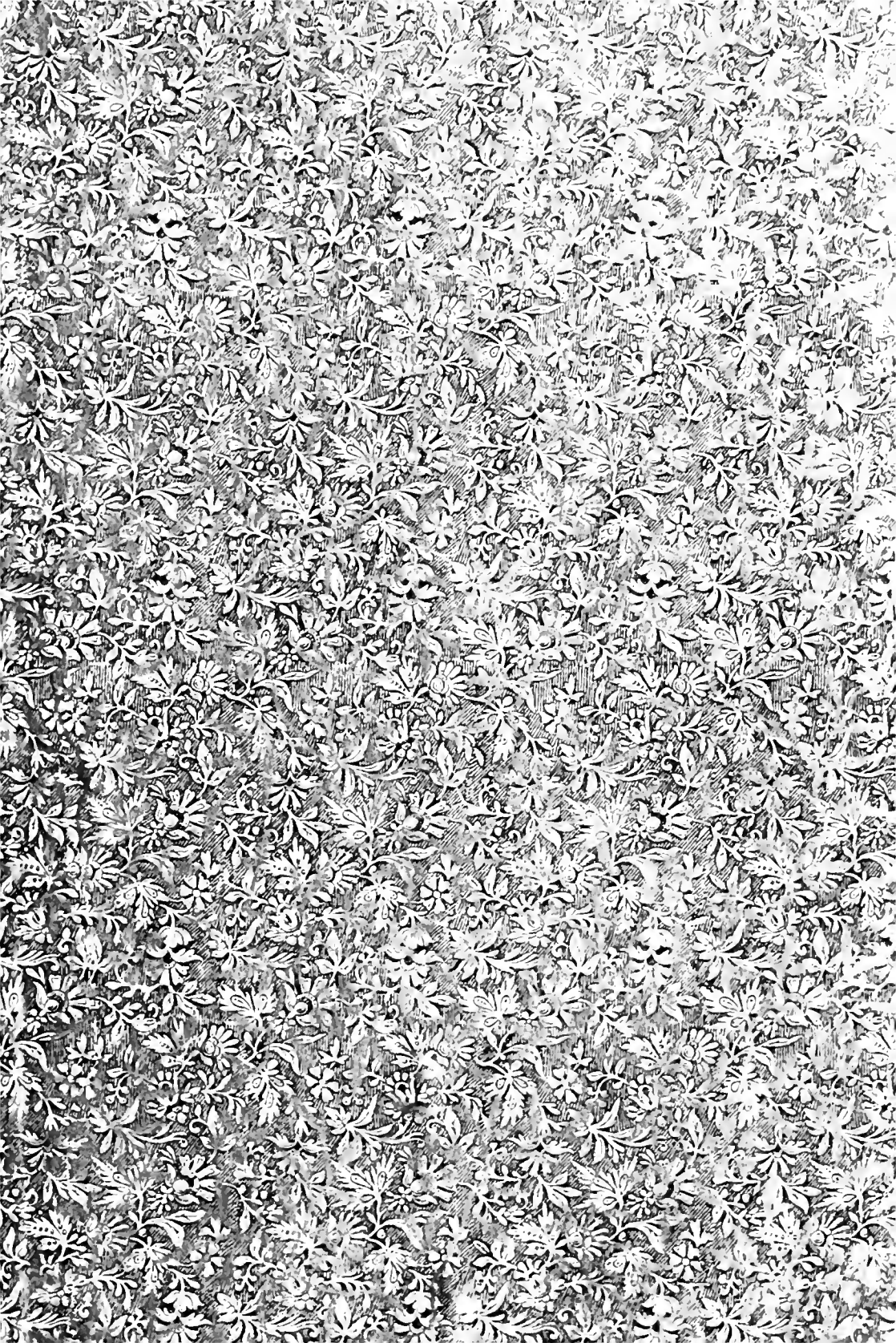
RULES, ESTABLISHED

FOR REGULATING THE PRACTICE OF THE

SUPREME AND CIRCUIT COURTS

OF

PENNSYLVANIA



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RULES, Eſtabliſhed

FOR *REGULATING* THE *PRACTICE* OF THE

Supreme and Circuit Courts

OF

PENNSYLVANIA.

&c. &c. &c.

THE following *RULES* are eſtabliſhed and declared by the Juſtices of the Supreme Court, for regulating the practice of the ſaid Court, and for the better conducting and expediting the buſineſs of the ſeveral Circuit Courts, in purſuance of two acts of General Aſſembly paſſed on the 25th day of September 1786, and on the 20th day of March 1799.

Attorney & Counſellor at Law.

1. It is ordered, that the rules of the Supreme Court made in January Term 1788, reſpecting the admiſſion of Attornies and

Counſellors and their priviledges remain in full force, and that to entitle any perſon to practiſe as an Attorney or Counſellor in the Circuit Courts, a previous admiſſion in the Supreme Court in Bank ſhall be indiſpenſably neceſſary.

Bail.

2. Upon the return of a Habeas Corpus in the Circuit Courts, the plaintiff may, in ſuch caſes wherein ſpecial bail has not been entered in the Court below, and the ſame is proper and neceſſary, enter a rule *of courſe* for a procedendo, unleſs good bail be put in within ſix weeks from the firſt day of the term to which the ſame is returnable, and after the laſt day of the ſaid ſix weeks may take out the procedendo *of courſe*, in ſuch caſes wherein the bail has not been regularly entered.

3. On removal of actions, by Habeas Corpus, from the Courts of Common Pleas into the Circuit Courts, bail ſhall be taken indefinitely according to the ancient courſe of the Supreme Court: provided always, that the defendant may make application to have the quantum of bail aſcertained, where the parties cannot

otherwiſe agree; which quantum may be directed by the Circuit Court or by a ſingle Judge out of Court, on reaſonable notice given to the adverſe party, and ſpecial bail ſhall be taken in the ſum thus agreed to or ordered.

4. The plaintiff may except againſt the bail at any time within the ſix weeks after the return day of the Habeas Corpus, or within four days afterwards, and the party ſhall perfect his bail within ten days after ſuch exception taken; the juſtification of the bail ſhall be in open Court, or before one of the Judges of the Court.

5. Special bail ſhall be required in all cauſes removed by Habeas Corpus out of the Courts of Common Pleas, except the defendant be an executor or adminiſtrator, or the action be for words, or ſmall treſpaſſes, or bail has been given in the Court below.

6. When exception is taken to bail, it muſt be entered with the Clerk of the Circuit Court, and alſo notice in writing ſhall be given thereof to the defendant or his attorney.

Certiorari.

7. All writs of Certiorari and Habeas Corpus ſhall be returned within the firſt four days of the term, or upon motion a procedendo or attachment may iſſue; and until they ſhall be returned, no other rule ſhall be taken in the cauſe.

8. When any plaintiff removes his cauſe into the Circuit Courts from the Common Pleas by Certiorari, notice ſhall be given to the defendant or his attorney of ſuch writ; and if the defendant will not appear gratis perſonally or by attorney in Court, within the firſt four days of the term to which the writ is returnable; then, on affidavit of ſuch notice, a capias may iſſue againſt the defendant, returnable on the eighth day afterwards, or on the firſt day of the next term, at the election of the plaintiff, to compel an appearance and ſpecial bail, where by law it may be required.

9. All cauſes removed into the Circuit Courts by writs of Certiorari, ſhall be brought up in the condition or ſituation in which they ſhall be in the inferior Court

at the time of the delivery of the writs, and the proceedings there begin upon the laſt rule in the cauſe in the Court below.

Demurrer.

10. It is ordered that the counſel for the plaintiff and defendant reſpectively, do furniſh a paper book or ſtate of the point in controverſy, for the uſe of the Judges of the Circuit Court, on all law arguments ariſing on demurrers, reſerved points, ſpecial verdicts or caſes ſtated for the opinion of the Court; that one of them be delivered to the chief Juſtice or ſenior judge by the plaintiff and the other to the puiſne judges by the defendant at leaſt two days before the argument, and that the Clerk do charge in the bill of Coſts what the Court ſhall think reaſonable for the ſame: If either party neglect to deliver the ſame as before directed, ſuch party ſhall not be heard when the cauſe comes on to be argued.

Habeas Corpus.

11. No Habeas Corpus ſhall be brought to remove a cauſe into the Circuit Court, after interlocutory judgment in the Court below.

12. The record itſelf being now removeable by Habeas Corpus cum cauſa, in all cauſes removed thereby into the Supreme or Circuit Courts, the proceedings therein ſhall begin upon the laſt rule in the Court below; but either party ſhall be at liberty to alter or amend their pleadings of courſe on ſuch removal, in the ſame manner as they would be entitled to do on an application to the Court; provided always, and in order to prevent ſurprize, when ſuch alterations or amendments change the nature of the demand, or defence, and thereby render other evidence neceſſary at the trial, the party altering or amending ſhall give *reaſonable notice thereof* to the adverſe party previous to the trial; in default whereof, the pleadings ſhall continue in the ſame ſtate and condition as when removed by Habeas Corpus, and be tried thereon.

Jury

13. No trial ſhall be put off on account of a view not being had by ſix of the firſt twelve of the jury, as they ſtand in the panel, provided any ſix of them have viewed, and ſome of them do appear to try the cauſe and that ſuch of them who have viewed and do appear, ſhall be firſt ſworn or affirmed on the trial; and that the form of the venire facias be altered accordingly.

14. On all venires for ſummoning juries, iſſued out of the Circuit Courts, the ſheriff to whom the ſame ſhall be directed, ſhall cauſe each juror to be ſerved with perſonal notice to attend. Such ſervice ſhall be at leaſt ten days before the day of appearance ſpecified in ſuch writs; and it ſhall be particularly mentioned in the notice that the juror is ſummoned to ſerve on the general jury, or a ſpecial jury (naming the plaintiff and defendant in the latter caſe.)—

15. The Sheriff ſhall cauſe the officer who ſhall have ſerved the proceſs, to attend the Court on the day whereon the venire is

returnable, in order that the proof thereof may be had whenever it ſhall be deemed requiſite.

16. The perſon who ſhall ſummon any jury upon any proceſs out of the Circuit Court ſhall make a minute or memorandum, on the panel, of the day of the month and year of ſummoning each juror and ſhall ſubſcribe the ſame, in order that due proof may be had thereof agreeably to the preceding rules.

17. It is ordered, that no ſpecial jury ſhall be directed on the application of any defendant, unleſs an affidavit of defence be filed in the office of the Clerk of the Circuit Court, agreeably to the terms of the act of Aſſembly paſſed 27th March 1789 in or before the firſt term in which the iſſue ſhall be joined in the Circuit Court, or in ſix weeks after the firſt day of the term of removal in caſe iſſue ſhall be joined below; nor unleſs there ſhall be ſubjoined to ſuch affidavit a certificate from Counſel to the following effect; "I do certify that I verily believe the application for a ſpecial jury is not made for the purpoſe of delay, but for the better inveſtigation of

the merits of the cauſe." But the counſel of both parties may mutually agree to a trial by a ſpecial jury.

Judgment.

18. It is ordered that no motion ſhall be made for a new trial after a motion in arreſt of judgment.

19. All motions for new trials, and reaſons in arreſt of judgment in cauſes tried in the Circuit Courts ſhall be made and offered within four days after the verdict; unleſs in cauſes tried within the four laſt days of the court, in which caſes, unleſs made before the court ends they ſhall not afterwards be received.

20. In all actions of debt and contract removed into the Circuit Courts to September and December, the plaintiff ſhall be at liberty to direct judgment *of courſe* to be entered at the third term of the Supreme Court, unleſs the defendant or ſome perſon for him or her ſhall make affidavit, and previouſly file the ſame in the Clerk's Office, that to the beſt of his or her know-

ledge and belief there is a juſt defence in whole or in part in the ſame cauſe : and if the defence is to part only, then judgment to be entered for ſo much as ſhall be acknowledged to be due to the plaintiff, if he or his attorney will accept the ſame in full ſatisfaction of his demand. The judgment ſo entered as of March Term in the Supreme Court, to be with a ſtay of execution for ſixty days, and thoſe of September term in the Supreme Court, for thirty days. But, in ſuch actions removed to the term of March in the Supreme Court, in default of ſuch affidavits, judgment of courſe to be entered as of September term following, with a ſtay of execution for ſixty days, the ſaid ceſſet to be computed from the firſt day of the reſpective terms in the Supreme Court.

21. On a report of Referrees returnable into the Clerk's Office, or to the next term, judgment ſhall not be entered thereon until thirty days after the return thereof; nor ſhall it be then entered unleſs by order of the Court. If either party ſhall file his exceptions thereto on oath or affirmation during the ſaid thirty days, to

which ſhall be ſubjoined to a written ſtatement of his Counſel, ſubſcribed with his name, certifying his belief that the ſame are ſufficient in law to obtain a deciſion in favour of his client, and not made for the purpoſe of delay.

Judges Order.

22. Any judge of the Court in vacation may, under ſpecial circumſtances, by his order enlarge the time for putting in, adding to, perfecting or juſtifying Bail, or for filing the declaration, plea, replication, rejoinder or other pleadings in the Cauſe. He may alſo hear objections againſt any rule, which has been taken or offered to be taken, and make his order thereon.

23. On a judgment, entered in the Clerk's Office, application may be made to any judge of the Court in the vacation on affidavit of a juſt and legal defence, and a certificate of Counſel ſubjoined thereto; that, in his belief, the grounds of defence are ſufficient to obtain a deciſion in favour of his client; and are not made for the

purpoſe of delay, to ſuſpend the proceedings on reaſonable terms until the next Circuit Court. But, where the circumſtances of the Caſe will not admit of that delay, application may be made to the *Supreme Court in Bank*, on giving reaſonable notice thereof.

24. No judge ſhall make an order, unleſs previous notice of the intended application has been given to the adverſe party for ſix days, when the party ſo notified reſides within thirty miles from ſuch judge's abode and one day additional for every thirty miles greater diſtance.

25. The validity of a judge's order may in all caſes be impeached by an application to the next ſupreme or Circuit Court: otherwiſe it ſhall ſtand in full force.

Plea and Pleading.

26. No dilatory plea ſhall be received, unleſs the party offering ſuch plea does by affidavit prove the truth thereof, or ſhew ſome probable matter to the Court to induce them to believe that the fact of ſuch dilatory plea is true.

27. It having been the common practice, to plead the general iſſue, with leave to give the ſpecial matter in evidence at the trial of the Cauſe ; in order for the future, that neither party may be taken by ſurpriſe, and, that a fair opportunity may be afforded, to encounter the evidence intended to be offered under ſuch rules, the party who propoſes to take the benefit of it ſhall, at leaſt ten days before the trial, give notice in writing to the other, what are the ſpecial facts or matters on which he will rely, and which he intends to urge in ſupport of his action, or by way of defence: otherwiſe he ſhall give no other evidence than what is by law ſtrictly admiſſible on a general iſſue plea, or what has been received on ſuch plea, by ſolemn and ſettled adjudications in this court.

28. When there have been mutual dealings between a plaintiff and defendant, and the defendant intends on the general iſſue to defalk his account againſt the plaintiff's demand or any part of it, he ſhall give notice thereof in writing, at leaſt ten days before the trial, and at the ſame time furniſh him with a copy of the account which he intends to give in evidence, and rely on ; and

if the plaintiff's action is not founded on a ſpecialty or writing, he in like manner ſhall be obliged on the defendant's requeſt, at the ſame time, or on a reaſonable notice, to give him a copy of his account and demand; ſo that there ſhall be an exchange of copies at the ſame time—otherwiſe the defendant ſhall not be compelled to a trial by the plaintiff, or *vice verſa*.

29. Whereas it has been adjudged in the Supreme Court, after ſolemn argument, that on a plea of payment to a bond or ſpecialty, the defendant may on the trial in avoidance of the deed, give in evidence that it was given without any, or a good conſideration, or obtained by fraud, or by a ſuggeſtion of a falſehood, or ſuppreſſion of the truth; for the future, it is ruled, that in all ſuch caſes the defendant ſhall give the plaintiff at leaſt thirty days notice in writing before the trial of the matter intended to be objected in avoidance of the ſame, or elſe he ſhall be precluded therefrom.

30. To ſettle in future all diſputes reſpecting the bringing of money into Court, in cauſes depending in the Circuit Courts, the ſame practice ſhall prevail in all ſuch caſes as the

ſtatute of the fourth and fifth of Anne Chap. 16 preſcribes, according to the uſage, practice, and conſtruction under it, in the Court of King's bench at Weſtminſter, at the time of the late revolution.

31. The Clerk ſhall receive for all ſums of money paid into Court, from the party paying in the ſame, at the rate of one per Cent for all ſums not exceeding one hundred pounds, and at the rate of ten ſhillings in the hundred pounds for all monies exceeding that ſum.

32. Where a declaration has not been filed in the Court below, the Clerk of the Circuit Court of the proper County ſhall enter a rule *of courſe* to declare in thirty days: and if a declaration ſhall not be filed within that period, (to be computed from the firſt day of the term in the Supreme Court) he ſhall enter a ſecond rule to declare or non pros. *of courſe*, by the firſt day of the enſuing term in the Supreme Court; and in failure thereof a non pros. ſhall be entered on the firſt day of ſuch ſucceeding term: But where the parties cannot otherwiſe agree, ſuch non pros. may be taken off by order of a

judge in vacation, on reaſonable grounds and giving notice as is herein before directed by the 24th rule.

33. After a declaration has been filed, the clerk ſhall enter *of courſe* a rule to plead in thirty days; and if no plea ſhall be then filed, he ſhall enter a ſecond rule to plead in thirty days or judgment or in failure thereof he ſhall enter judgment; the defendant ſhall not however by a delay in pleading, prevent the plaintiff from a ſpeedy trial, in the ordinary courſe of practice, nor ſhall the plaintiff compel the defendant to a trial; unleſs the declaration has been filed in the Prothonotary's Office at leaſt thirty days before the time of holding the Circuit Court.

34. Upon a plea or pleas being entered, the clerk ſhall, *of courſe*, put the cauſe to iſſue and enter the proper replications, and other pleadings for that purpoſe; but, the act of the Clerk, herein ſhall not prejudice either of the parties. Each party ſhall have it in his power, to enter other pleadings, or demur, as they may deem moſt eligible; provided they give reaſonable notice thereof to the adverſe party, to prevent ſurpriſe and ſecure a fair trial. The tim

of filing the declaration, pleas, replications and all other pleadings and papers ſhall be diſtinctly marked in the Clerk's docquet.

35. In all actions of debt or contract where the defendant ſhall not make affidavit of a juſt defence, he ſhall have it in his power to prevent the expence of ſummoning a jury and other incidental coſts, by confeſſing a judgment, with ſtay of execution, in the manner herein before directed by the 21ſt rule.

In order to prevent ſurpriſe, and that the attornies on each ſide may be informed of the different rules taken in each cauſe, the Circuit Court docquet ſhall be called over in the Clerk's Office of every County, on the tueſday of each Court of Common Pleas of the proper County, at or immediately following the ſeveral terms of the Supreme Court.

Sheriff.

36. If any ſheriff, under-ſheriff, deputy or bailiff, ſhall wilfully delay the execution of any proceſs, or ſhall take or require any undue fees for the ſame, or ſhall give notice

to the defendant thereby to fruſtrate the execution, of any writ or proceſs; or, having levied money in execution ſhall detain the ſame in his hands after the return of the writ; the officer ſo offending ſhall be liable to an attachment, information, commitment or fine, as the caſe may require.

37. Every ſheriff, under-ſheriff, deputy or bailiff, ſhall upon reaſonable notice given to him deliver a true copy of the inventory of any goods, chattels, or effects taken by him upon a *fi-fa*, elegit, or attachment, to the perſon requiring the ſame, he paying for ſuch copy not exceeding one cent for every twelve words.

Trial.

38. When a cauſe has been at iſſue in the Circuit Court for the ſpace of one year, without ordering the ſame for trial, three months notice of trial ſhall be given.

39. All cauſes ſhall be tried in the order in which they ſtand on the iſſue docquet, ſaving the preference due to the Common-

wealth. But where the Commonwealth is not intereſted in the event, ſuch cauſe ſhall not be entitled to priority, tho' the ſtate be named as a party.

40. Notice of trial ſhall be given in writing to the defendant, or to his attorney, or left at their houſes, or uſual places of abode, at leaſt fourteen days before the day of ſuch intended trial, if the defendant reſides out of the County, or above forty miles from the place where ſuch trial is expected; and at leaſt ten days, if he reſides within the County, or within forty miles of ſuch place of trial in the Circuit Courts: and in caſe the defendant or his attorney is unknown, or cannot be found, then ſuch notice ſhall be ſerved upon the defendant's bail, if known, or to be found; and if not, then it ſhall be ſtuck up in the Prothonotary's Office of the proper County, fourteen days at the leaſt before ſuch intended trial, and there remain open to public inſpection for that ſpace of time. The expences attending ſuch notices ſhall be allowed to the attorney in the taxing of the bill of coſts.

41. If the defendant has obtained a rule for a ſpecial jury, and has not uſed due dili-

gence to obtain the ſame to be ſtruck and ſummoned, the plaintiff ſhall not be prevented from trying the cauſe by a common Jury. A general venire facias ſhall ſerve for all the cauſes intended to be tried by the Common traverſe jury; but, in caſe of ſpecial juries, a particular venire facias ſhall iſſue in each ſuit.

42. In all cauſes tried at Bar, as well as at niſi prius and in the Circuit Courts, not more than two counſel on each ſide ſhall be permitted to ſum up the evidence to the jury.

Views.

43. Rules for views in the Circuit Courts ſhall not be conſidered *of courſe*, but where views may be proper and neceſſary to aſcertain *Boundary*, and the ſame ſhall be ſo certified, under the hand of the counſel applying for the ſame, and filed in the office of the Clerk of the Circuit Court, ſuch rule may be entered: and where Rules for views have been obtained in the Courts of Common Pleas, in cauſes hereafter removed into

the Circuit Courts, the ſame ſhall only be made uſe of on the certificate of counſel being filed in the manner herein before directed; And in all caſes of views the party who ſhall enter the rule therefor ſhall bear and pay the expences thereof, and ſhall not have any allowance for them upon taxation, unleſs the Court on trial ſhall certify that ſuch rule was proper and neceſſary, in the ſame manner as is directed by law with reſpect to the ſtriking of Juries.

Witneſſes.

44. A rule to take the depoſitions of ancient, infirm and going witneſſes to be read in evidence on the uſual terms upon trial, is *of courſe*, and may be entered by either party in the Clerk's office, ſtipulating a reaſonable notice to the adverſary, ſo of a rule for a commiſſion to any of the United States, or to foreign parts; but, the interrogatories muſt be filed in the Clerk's office at the time and written notice of this laſt rule, and of the names of the Commiſſioners, muſt be ſerved on the adverſe party at leaſt fifteen days before the Com-

miſſion iſſues, in order that he may file croſs interrogatories or nominate Commiſſioners on his own part, if he ſhall deem it eligible.

45. Notwithſtanding a rule of the Court hath been obtained for taking the depoſitions of witneſſes, and that they ſhall be read in evidence at the trial of the cauſe, in caſe of the death, abſence out of the ſtate, or other legal inability of ſuch witneſſes to attend: yet, it is required, that the party offering ſuch a depoſition in evidence ſhall ſatisfy the Circuit Court that the witneſs, if reſident within this ſtate, and within forty miles of the place of trial, was duly ſubpœnaed, or could not be found after reaſonable pains taken for that purpoſe; otherwiſe the ſame may not be admitted.

46. Where a commiſſion or commiſſions ſhall be taken out for the examination of witneſſes reſiding out of the juriſdiction of this Court, the expences of executing ſuch Commiſſion ſhall be allowed in the bill of coſts; provided, it ſhall appear to the Court that the perſons examined were

material witneſſes: but, no greater ſum than five pounds will be allowed in any caſe for the execution of any one commiſſion.

Writ of Inquiry.

47 Writs of Inquiry ſhall iſſue *of courſe* in ſuch caſes where by law, or the uſual practice, damages are to be liquidated. They may be executed at the Bar of the Circuit court on motion, and cauſe ſhewn, and judgments thereupon be rendered during the ſame Court: But, if executed in the vacation, no judgment ſhall be entered thereon until the next Circuit Court to be held for the ſame County—in caſe the defendant ſhall file his objections thereto on oath or affirmation in the Clerk's office, during the Supreme Court term following, the execution of the Writ of Inquiry, to which ſhall be ſubjoined a written ſtatement of his counſel, ſubſcribed with his name, certifying his belief that the ſame are ſufficient in law to obtain a deciſion in favour of his Client, and are not made for the purpoſe of de-

lay ; in failure whereof, judgment ſhall be entered *of courſe* on the laſt day of the ſaid following term in the Supreme Court.

EDWARD SHIPPEN.

I. YEATES.

THOMAS SMITH.

H. H. BRACKENRIDGE.

Whitehall:

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PHILADELPHIA.

1800.

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Dear Sir

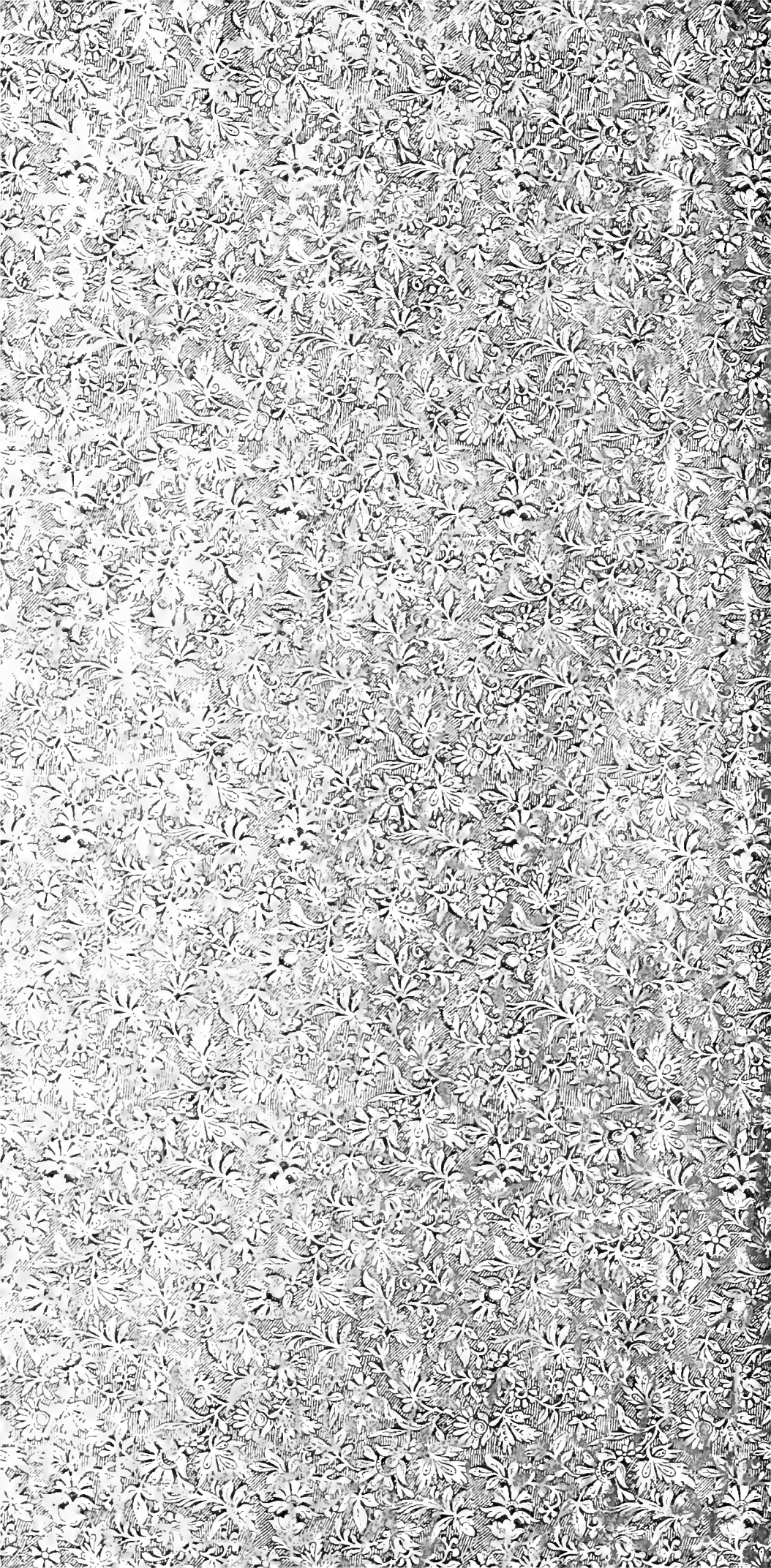
The Treasurer of the Law Association is Mr. John W Wallace whose office is at the South East corner of 6th & Walnut & his dwelling No. 284. Spruce St.

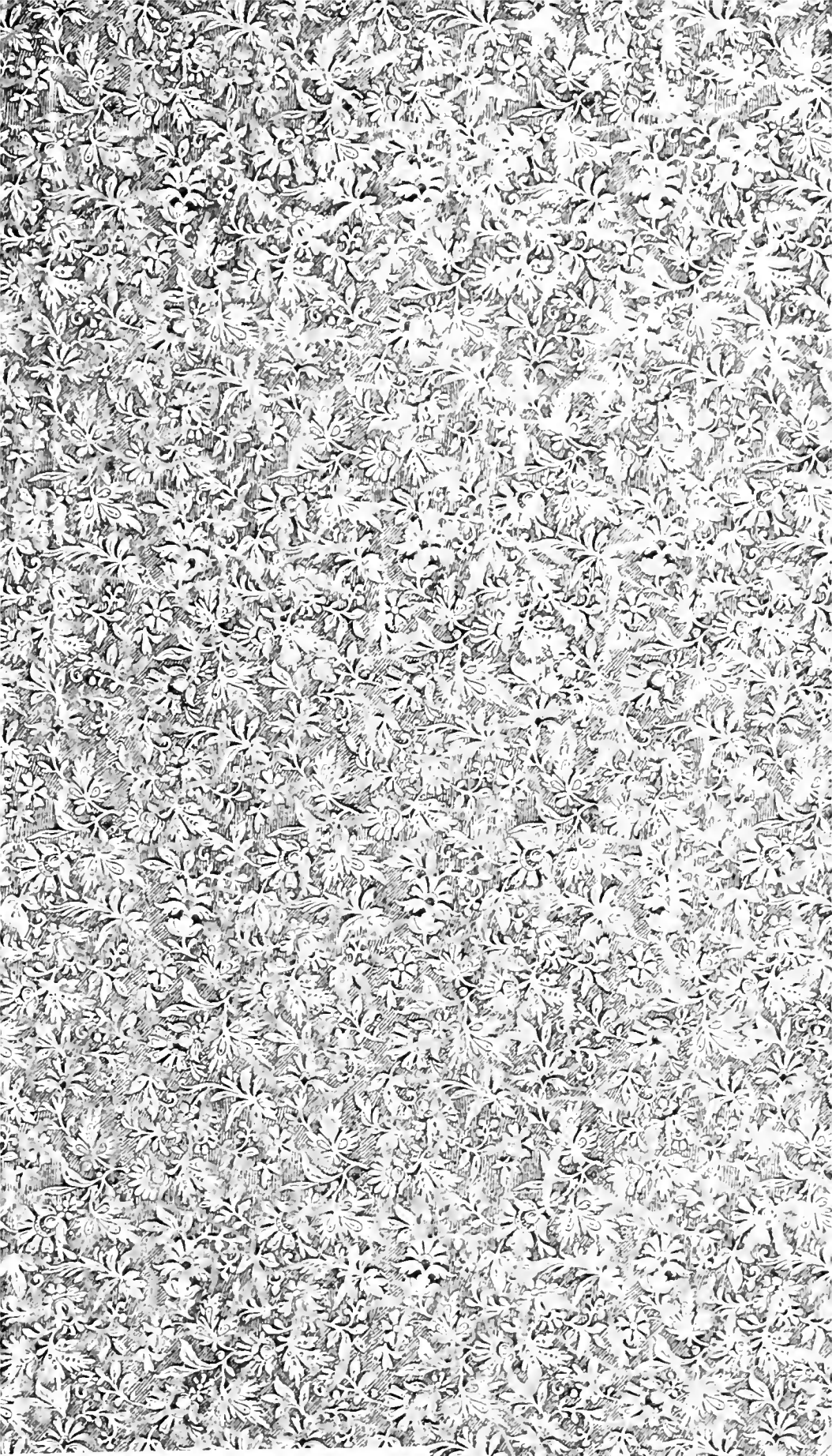
I am very respectfully
and truly yrs
P McCall.

Jany. 14th

Edward T Bard Esquire.

Peter McCall
14th Jany
1848





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